IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.520 OF 2006
IN
SUIT NO.1815 OF 1989

Pukharaj G. Vyas. ..Plaintiff.

V/s.

Vyas Co-op. Housing Society Ltd.& Ors. ..Defendants.

And

J.S.Shetty(since deceased) & Ors. ..Applicants.

WITH

CHAMBER SUMMONS NO.690 OF 2006
IN
CHAMBER SUMMONS NO.520 OF 2006
IN
SUIT NO.1815 OF 1989

Pukharaj G. Vyas. ..Plaintiff.

V/s.

Vyas Co-op. Housing Society Ltd.& Ors. ..Defendants.

And

J.S.Shetty(since deceased) & Ors. ..Applicants.

And

Kasturi Rangan & Ors. ..Applicants.

WITH

CHAMBER SUMMONS NO.1230 OF 2006
WITH
CHAMBER SUMMONS NO.520 OF 2006
IN
SUIT NO.1815 OF 1989

Pukharaj G. Vyas. ..Plaintiff.

V/s.

Vyas Co-op. Housing Society Ltd.& Ors. ..Defendants.

And

J.S.Shetty(since deceased) & Ors. ..Applicants.

And

Smita M.Kondurkar. ..Applicant.

WITH

CHAMBER SUMMONS NO.1231 OF 2006
IN
CHAMBER SUMMONS NO.520 OF 2006
IN
SUIT NO.1815 OF 1989

Pukharaj G. Vyas. ..Plaintiff.

V/s.

Vyas Co-op. Housing Society Ltd.& Ors. ..Defendants.

And

J.S.Shetty(since deceased) & Ors. ..Applicants.

Mr.A.Y.Sakhare a/w R.S.Deshpande for Applicants in C.S.No.520/06, 690/06, 1230/06 and 1231/06.

Mr.A.P.Rege for Applicant in C.S.No.690/06.

Ms.Alpana Zaveri for Applicants in C.S.NO.1230/06 and 1231/06.

Mr.A.P.Guram, Asstt. Prothonotary(ADM).

CORAM: A.M.KHANWILKAR,J

DATE : AUGUST 21, 2007.

P.C. :

1. All these Chamber Summonses can be disposed of by this Common Order.

2. The leading Chamber Summons is filed by the third party in Suit No.1815 of 1989. In that suit, an Order was passed appointing Court Receiver. Further direction was issued that the occupants of the disputed premises will remain as agent of the Court Receiver on payment of certain amounts. The Applicants in the leading Chamber Summons No.520 of 2006 are claiming to be in possession of the disputed property, possession whereof is taken over by the Court Receiver. As per the Order, the applicants-third party paid the specified amount from time to time to the Court Receiver and continued to remain in possession. It is stated that the Applicants in the leading Chamber Summons paid sum of Rs.14,69,830/- to the Court Receiver towards compensation/royalty for remaining in possession of the disputed premises which were the subject matter of the suit No.1815 of 1989. It is not in dispute that the Suit No.1815 of 1989 has been eventually dismissed for non-prosecution, which order has attained finality. It is not in dispute that the Order appointing Court Receiver in the said Suit has also been recalled. Naturally, with the discharge of Court Receiver, the Applicants in the leading Chamber

Summons being Chamber Summons No.520 of 2006 have now approached this Court for permission to withdraw the amount, which they have deposited from time to time with the Court Receiver, as referred to earlier. The prayer of the applicants in Chamber Summons No.520 of 2006 is resisted by the Applicants, who are also third parties to the Suit No.1815 of 1989.

3. The Applicants in the companion Chamber Summons have opposed the prayers of the applicants in the leading Chamber Summons on the argument that they have filed suit for appropriate reliefs. One of the grievance in the Suit is that the Applicants in the leading Chamber Summons have forcibly taken possession of the suit property and have remained in occupation thereof. Even so, the question is whether the third parties in the cognate Chamber Summons Nos.690/2006, 1230/2006 and 1231/2006 respectively can resist the claim of the Applicants in leading Chamber Summons No.520 of 2006 for refund of the amount deposited by them with the Court Receiver. The objection has been rightly countered by the Counsel for the Applicants in the leading Chamber Summons by placing reliance on the Orders passed by this Court on 17th July, 2007 in Notice of Motion No.859 of 2005 in Suit No.2029 of 1993, which Suit is

filed by third party Kasturi Rangan as well as Order dated 5th October, 2006 in Notice of Motion No.860 of 2005 in Suit No.2028 of 1993, which Suit has been filed by third party Sami A. Kungle. Lastly, reliance is placed on the Order dated 25th July, 2007 passed in Notice of Motion No.1127 of 2006 in Suit No.3324 of 1992, which Suit has been filed third party Dr.Manoj M. Khivsare.

4. On going through the said orders, it is obvious that the request of appointment of Court Receiver in respect of self-same property has already been rejected vide Order dated 5th October, 2006. It is also seen from the Order dated 25th July, 2007 that the Court Receiver has been injuncted by this Court for disbursing the amount to any other person. The fact remains that, as of now, there is no order passed in any of the proceeding taken out by the third party applicants in the cognate Chamber Summons, whereunder Court Receiver has been appointed in respect of the suit property. It would have been a different matter, if Court Receiver was to be appointed in respect of the disputed property occupied by the applicants in the leading Chamber Summons. So long as there is no order of appointing Court Receiver, the question of applicants in leading

Chamber Summons paying any further amount or for that matter being deprived of withdrawing the amount pending in the account of Court Receiver, which was paid by them from time to time aggregating to Rs.14,69,830/- does not arise. Counsel for the third party in the cognate Chamber Summons however, would submit that the orders referred to by the Applicants in leading Chamber Summons are already subject matter of challenge in appeal pending before this Court. Even so, as there is no order appointing the Court Receiver in respect of the Suit Property and the amount deposited by the applicants in leading Chamber Summons not being subject to any charge, there is no tangible basis to not accept the request of the Applicants in the leading Chamber Summons for return of their amount lying with the Court Receiver. It will be open to the third party Applicants in cognate Chamber Summons to seek appropriate relief in the proceeding instituted by them respectively, as may be advised and as permissible in law including for compensation and royalty in respect of the suit property.

5. Suffice it to observe that the Applicants in the leading Chamber Summons No.520 of 2006 have made out sufficient ground for grant of relief in terms of

prayer clause (a) of their Chamber Summons. If that relief is to be granted as a necessary corollary, the cognate Chamber Summons filed by the third party, which are heard together alongwith the leading Chamber Summons will fail.

6. Accordingly, I proceed to pass following order.

> "Chamber Summons No.520 of 2006 is made absolute in terms of prayer clause (a). Rest of the Chamber Summonses are dismissed. No order as to costs."

7. Counsel for the Applicants in the cognate Chamber Summons pray that operation of this order be stayed for a period of two weeks as their clients would like to take up the matter in appeal. In the circumstances, it is ordered that no effect be given to this Order for a period of two weeks from today.

(A.M.KHANWILKAR,J)